

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:09-CT-3100-BO

JAMES JOSEPH OWENS,
Plaintiff,

v.


MR. CAVALERI, et al.,
Defendants.

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ORDER

Plaintiff filed this action pursuant to Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). Plaintiff's filings were difficult to follow, and the court ordered plaintiff to amend the complaint. On November 30, 2009, plaintiff did so in a timely manner as requested by the court. After some period of delay, the court entered an order which allowed the claims to continue pursuant to 28 U.S.C. § 1915. Thereafter, defendants were serviced by the Marshals Service within the time period allowed under Federal Rules of Civil Procedure 4(m). The motion to dismiss based on plaintiff's failure to serve the complaint is DENIED. Robinson v. Clipse, 602 F.3d 605 (4th Cir. 2010) ("In forma pauperis plaintiffs must rely on the district court and the U.S. Marshals Service to effect service of process according to 28 U.S.C. § 1915. Therefore, an in forma pauperis plaintiff should not be penalized for a delay caused by the court's consideration of his complaint. That delay 'is solely within the control of the district court.'" (citations omitted))

Accordingly, the motions to dismiss are DENIED. (D.E. # 23 and 26) SO ORDERED, this the 30 day of November 2011.


TERRENCE W. BOYLE
United States District Judge